

April 2000

COMPETITIVE CONTRACTING

The Understandability of FAIR Act Inventories Was Limited



G A O

Accountability * Integrity * Reliability



G A O

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, D.C. 20548

General Government Division

B-283779

April 14, 2000

The Honorable Tillie Fowler, Chair
Subcommittee on Oversight, Investigations, and
Emergency Management
Committee on Transportation and Infrastructure
House of Representatives

Dear Madam Chair:

As requested, this report describes the initial implementation of the Federal Activities Inventory Reform (FAIR) Act of 1998 and examines selected agencies' inventories of noninherently governmental activities.¹ These agencies are the Departments of Commerce and Transportation, the General Services Administration (GSA), and the Environmental Protection and Federal Emergency Management Agencies. The FAIR Act became law on October 19, 1998, requiring executive agencies to submit each year to the Office of Management and Budget (OMB) inventories of activities that, in the judgment of the head of the agency, are not inherently governmental functions. OMB's Circular A-76, which establishes federal policy for the executive branch's performance of commercial activities, includes detailed procedures for competitively determining whether commercial activities should be performed by federal employees or the private sector. As our October 1999 testimony discussed, implementation of the FAIR Act is in its early stages, and continuing congressional interest in the FAIR Act is needed to maintain serious agency attention to developing and using the inventories.²

Our objectives were to (1) describe the overall initial implementation of the FAIR Act, (2) analyze the clarity and understandability of the five agencies' FAIR Act inventories, (3) examine the extent to which these agencies exempted commercial activities from competition, and (4) identify supplemental information that enhanced the understandability of agencies' inventories.

¹Section 5 of the FAIR Act, Public Law No. 105-270, 112 Stat. 2382, 2384 to 2385, 31 U.S.C. § 501 note (1998), defines an inherently governmental function as "a function that is so intimately related to the public interest as to require performance by Federal Government employees."

² Competitive Contracting: Preliminary Issues Regarding FAIR Act Implementation (GAO/T-GGD-00-34, Oct. 28, 1999).

The possible consideration of contracting for some of these activities makes it important for interested parties to be able to look across agencies' inventories to identify differences in whether agencies consider an activity inherently governmental, commercial and subject to competition, or exempt from competition. In addition, reflecting the importance of some degree of comparability across agencies, the commercial activities listed in agencies' FAIR Act inventories must be understandable to interested parties. As defined by the act, interested parties may challenge agency lists based on "an omission of a particular activity from, or an inclusion of a particular activity on, a list."³ Interested parties have 30 days after the publication of the notice of the public availability of the FAIR Act inventory to file a challenge.⁴

OMB revised its Circular A-76, "Performance of Commercial Activities" and its Circular A-76 Supplemental Handbook on June 24, 1999, to implement the FAIR Act. This guidance contains function codes to characterize the various types of commercial activities performed by agency employees, for example "Health Services: Medical Records," and reason codes for agencies to categorize whether the commercial activities they listed were exempt from, or could be considered for, competition. The FAIR Act provides that when an agency considers contracting with a private sector source for a commercial activity on its list, the agency shall use a competitive process to select the source unless it is exempted from doing so.

Results in Brief

Ninety-eight executive agencies developed and published inventories of their commercial activities under the FAIR Act's first year of implementation, identifying about 904,000 full-time equivalent (FTE) employees performing commercial activities.⁵ Compared to prior efforts to

³ As defined in section 3 of the FAIR Act, interested parties are (1) a private sector source that is a prospective or actual offeror for any contract who has a direct economic interest in performing the activity and would be adversely affected by a determination not to procure the performance of the activity from a private sector source, (2) a representative of any business or professional association whose membership includes private sector sources described in paragraph (1) above, (3) an officer or employee of an organization within the executive agency that is an actual or prospective offeror to perform the activity, and (4) the head of a labor organization, referred to in 5 U.S.C. § 7103 (a) (4) that includes members who are officers or employees within an executive agency involved in performing the activity.

⁴ We are looking at the issues raised during the challenges and appeals process at the request of the Chairman, Subcommittee on Government Management, Information and Technology, House Committee on Government Reform.

⁵ These inventories included submissions to OMB stating that the agency has no commercial activities. They were also made available to Congress and the public. In addition to these agency submissions, 16 Offices of Inspector General separately submitted FAIR Act inventories to OMB. The 98 agencies do not include intelligence agencies (other than the Central Intelligence Agency) because before obtaining a copy of their inventories appropriate security clearance and a need to know must be established.

inventory commercial activities, the initial implementation of the FAIR Act increased the number of agencies identifying and reporting on their commercial activities and increased the amount of information about agencies' commercial activities that is publicly available.

However, the clarity and understandability of the five FAIR Act inventories we reviewed was limited. OMB's June 1999 list of function codes used by agencies to characterize the types of commercial activities they perform was incomplete. Because OMB allowed agencies to use an expanded list of function codes for their FAIR Act inventories that was not contained in OMB's June 1999 guidance, it may have been more difficult for interested parties who did not have the expanded list to identify the activities agencies are performing. Function codes on both the official and expanded lists are vague, and OMB has not defined them. Agency officials said that OMB's function codes were not adequate to clearly categorize the commercial activities that their employees perform. As outlined in its budget procedures memorandum, the purpose of OMB's reviews was to seek to ensure consistency within and across the inventories; but the formats differed, and some agencies used unique function codes to categorize some of their activities. This limited the ability of interested parties to identify potentially similar activities, such as automatic data processing or administrative activities that are conducted across the government.

The five agencies exempted a range of from 37 to 99 percent of the commercial activities they identified from consideration for competition.⁶ For example, the Federal Emergency Management Agency (FEMA) exempted 99 percent (2,302 FTEs) of its commercial activities from competition because they perform emergency functions, according to the agency. Interested parties may challenge the omission of a particular activity from, or the inclusion of a particular activity on, an agency's inventory. However, since the FAIR Act does not require that commercial activities be competed, it does not provide for challenges to agencies' decisions to exempt commercial activities listed on the inventories from competition.

FTEs are used to measure federal civilian employment. One FTE is equal to 1 work year of 2,080 hours.

⁶ Because of inconsistencies in Commerce's inventory, we could not determine which activities they determined would or would not be considered for competition. The 37 percent includes 12 percent exempted and 25 percent that GSA excluded from consideration for competition until reinvention efforts are completed.

Finally, we found that some of the supplemental information that the five agencies included enhanced the understandability of the FAIR Act inventories. For example, although the FAIR Act does not require agencies to identify their inherently governmental activities, GSA's inventory listed both its commercial and inherently governmental activities. Including this information provided a fuller perspective about the range of activities that GSA performs.

In enacting the FAIR Act, Congress made agencies' inventories of their commercial activities available to the public and subject to challenges and appeals by interested parties. In order for the inventories to be informative, however, they must be clear and understandable. Accordingly, we recommend that the Director of OMB reexamine the function codes in OMB's guidance so that agencies' identifications of the activities they are performing are clear and understandable to Congress and the public, including interested parties. We also recommend that the Director of OMB reinforce the principles established in OMB's budget procedures memorandum for OMB staff to enhance the consistency of the inventories within and across executive agencies.

Background

Before the FAIR Act was passed, there had been considerable debate that agencies, with some exceptions, were not making a serious effort under Circular A-76 to ensure that they rely on the private sector for commercial goods and services to the extent that it is cost effective. OMB Circular A-76, issued in 1966, establishes federal policy for the government's performance of commercial activities. Under Circular A-76, executive agencies are to conduct cost-comparison studies of commercial activities performed by government personnel to determine whether it would be more cost effective to maintain the activities in-house or contract with the private sector for their performance. In 1979, OMB issued a supplemental handbook to the circular to provide guidance for determining whether agencies' activities are inherently governmental or commercial and for agencies to inventory their commercial activities. This supplemental handbook includes OMB's list of function codes for agencies to use to identify their commercial activities.

In an attempt to devote more attention to the implementation of Circular A-76, on May 12, 1998, OMB's then Director, Franklin Raines, requested agencies to submit to OMB inventories of their full- and part-time positions involving commercial and inherently governmental activities. Often

referred to as the “Raines lists,” agencies were to group their activities as either

- inherently governmental;
- commercial, but specifically exempt from the cost-comparison requirements of OMB Circular A-76;
- commercial and should be competed; or
- commercial, but must be retained in-house.

OMB requested that agencies submit their Raines lists by October 31, 1998. An OMB official said that OMB had intended to provide agencies with feedback on their lists but did not do so because the Raines lists were “overtaken by events,” specifically the passage of the FAIR Act. (App. I describes how the agencies we reviewed used their Raines lists in developing their FAIR Act inventories.)

Our prior work has shown that savings are possible when agencies undertake a disciplined approach, such as that called for under Circular A-76, to review their operations and implement the changes to become more efficient themselves or contract with the private sector for services.⁷ Agencies’ experiences with the Circular A-76 process suggests that competition is a key to realized savings, regardless of whether functions are eventually performed by private sector sources or retained in-house. However, despite the federal policy on commercial activities, a minimal amount of Circular A-76 activity occurred in the past, particularly among civilian agencies since the late 1980s.⁸ For example, in fiscal year 1997, the Department of Defense was the only executive agency that reported to OMB that it had completed any Circular A-76 cost-comparison studies for federal positions.

OMB implemented the FAIR Act by revising its Circular A-76 guidance and supplemental handbook, which included adding the new elements required by the FAIR Act to the data elements already called for in the agencies’ Circular A-76 inventories of commercial activities. Like Circular A-76, the FAIR Act does not require that commercial activities be competed. OMB issued its revised guidance for the first year’s implementation of the FAIR Act in the Federal Register on June 24, 1999, about a week before the first

⁷ OMB Circular A-76: Oversight and Implementation Issues (GAO/T-GGD-98-146, June 4, 1998); DOD Competitive Sourcing: Results of Recent Competitions (GAO/NSIAD-99-44, Feb. 23, 1999); and Defense Reform Initiative: Progress, Opportunities, and Challenges (GAO/T-NSIAD-99-95, Mar. 2, 1999).

⁸GAO/T-GGD-98-146, June 4, 1998.

inventories were due to OMB for “review and consultation,” as required by the act.

To meet its “review and consultation” responsibilities under the FAIR Act, OMB issued budget procedures memorandum number 829 on July 12, 1999, instructing its staff to review agencies’ inventories to seek to ensure consistency within an agency and across the Government. However, OMB’s budget procedures memorandum states that OMB will not be seeking to confirm, or validate, each and every element of the detailed information contained in the agencies’ inventories; that the FAIR Act provides for such a detailed review to take place in the agencies’ development of their inventories and in the revisions that may result from any challenges and appeals; and, in preparing its FAIR Act submission, each agency needs to assess its operations to identify which are commercial and which are inherently governmental.

Scope and Methodology

At your request, we reviewed the initial implementation of the FAIR Act by the Environmental Protection Agency (EPA), FEMA, GSA, the Department of Transportation (DOT), and Commerce.⁹ We selected four agencies that are within the Subcommittee’s jurisdiction and added the Department of Commerce to include an additional cabinet-level department with component agencies that have broad and crosscutting responsibilities. We collected the five agencies’ FAIR Act inventories and any related documentation and developed databases to analyze this information. We examined and compared the development, content, and format of these agencies’ FAIR Act inventories and related supporting material to identify instances that might reasonably aide or impede comprehension or use of the inventories by Congress and the public, including interested parties. We also interviewed the appropriate officials at each of the five agencies about the processes they used to develop their FAIR Act inventories, the characteristics of these inventories, and to obtain their comments on OMB’s guidance. In addition, we interviewed OMB officials about the guidance they provided to agencies and their responsibilities to review and consult with agencies about the contents of their FAIR Act inventories.

We conducted our work between July 1999 and January 2000 at OMB, EPA, FEMA, GSA, DOT, and Commerce headquarters in Washington, D.C., in accordance with generally accepted government auditing standards. We provided a draft of this report for review and comment to the Directors of

⁹ You also asked for information regarding FAIR Act implementation by the U.S. Army Corps of Engineers. As agreed, this information will be included in our upcoming report to the Chairman of the Military Readiness Subcommittee of the House Armed Services Committee. This report will discuss the Department of Defense’s efforts to implement the FAIR Act.

OMB and FEMA, the Secretaries of Transportation and Commerce, and the Administrators of EPA and GSA. Their comments are reflected in the agency comments section of this report.

FAIR Act Increased the Identification of Commercial Activities but Understandability Was Limited

Compared to prior efforts under Circular A-76 to inventory commercial activities, the initial implementation of the FAIR Act has increased the number of inventories developed by executive agencies, resulting in an increased number of FTEs identified as performing commercial activities. The FAIR Act has also made this information available to Congress and the public. However, in order for the inventories to be informative, they must be clear and understandable. The clarity and understandability of the five agencies' FAIR Act inventories we reviewed was limited. OMB's June 1999 list of function codes to categorize commercial activities was incomplete, vague in some cases, and did not adequately capture agencies' activities. Although OMB reviewed them, the agencies' inventories were not always consistent.

Agencies Are Performing Commercial Activities

Information OMB published in the Federal Register for the first year's implementation indicates that 98 executive agencies submitted FAIR Act inventories to OMB.¹⁰ According to an OMB official, the inventories listed 904,000 FTEs performing commercial activities, an increase over the number of FTEs previously identified through the Circular A-76 process.

As shown in table 1, of the 5 agencies we reviewed, DOT identified the largest number of FTEs (12,796) performing commercial activities, representing about 13 percent of DOT's total number of FTEs. Therefore, it appears that DOT has determined that 86,079 FTEs (87 percent) of its FTEs are performing inherently governmental activities.

Table 1: Number and Percent of FTEs Agencies Identified as Performing Commercial Activities

Agency	Number (and percent) of FTEs performing commercial activities		Number (and percent) of inherently governmental FTEs		Total FTEs
Commerce ^a	8,466	(27%)	23,112	(73%)	31,578
EPA	829	(5%)	17,160	(95%)	17,989
FEMA	2,324	(76%)	746	(24%)	3,070
GSA	7,249	(51%)	7,029	(49%)	14,278
DOT	12,796	(13%)	86,079	(87%)	98,875

^aCommerce's total number of FTEs performing commercial activities is based on our analysis. Commerce's summary table included in its FAIR Act submission showed 8,530 FTEs, but we found a discrepancy within Commerce's supporting databases, indicating that the total number of FTEs performing commercial activities is 8,466.

¹⁰ Some agencies' inventories were submissions to OMB stating that the agency had no commercial activities.

Source: GAO analysis of selected agencies' FAIR Act inventories and interviews with agency officials.

FEMA identified the highest percentage (76 percent) of its total 3,070 FTEs as performing commercial activities. In contrast, EPA identified the lowest percentage (5 percent) of its total 17,989 FTEs as performing commercial activities. EPA's Deputy Chief Financial Officer said that he does not expect the percentage of activities EPA identifies as commercial to remain static. He also emphasized that EPA is already very reliant on contractor support to fulfill its mission.

To provide public access to their inventories, both FEMA and GSA placed their inventories on their Internet websites. The other agencies (Commerce, EPA, and DOT) provided printed copies of their inventories to interested parties upon request.

The Clarity and Understandability of the Inventories Was Limited

In order for the inventories to be informative for Congress and the public, the inventories must be clear and understandable, but the clarity and understandability of the agencies' inventories we reviewed was limited. The list of function codes included in OMB's June 1999 guidance did not list all of the function codes agencies used in their inventories. Some of OMB's codes are vague and there are no definitions available. In addition, according to officials from some agencies, OMB's function codes do not adequately capture the activities their employees perform. Although OMB reviewed them, the agencies' inventories were not always consistent either within an agency or across executive agencies.

OMB's June 1999 guidance and the information available on its website do not provide the complete list of function codes agencies used in their FAIR Act inventories. This lack of information could make it more difficult for interested parties to be able to understand what activities the agencies are performing. The June 1999 guidance contains 12 major categories with 163 function codes listed in the supplemental handbook. For example, one category is "health services" with function codes such as "dental care" and "pharmacy services." A prior draft of this list, which was never completed by OMB and did not become part of its June 1999 guidance, included 21 major categories with 385 function codes. An OMB official said that they never completed the expanded list because of the lack of time to revise the function codes and have them cleared for use in developing the FAIR Act inventories.

OMB's official guidance and website do not contain 9 major categories of activities that include 222 specific function codes, many of which agencies used in the inventories we reviewed. For example, over half of the

function codes used in DOT's inventory are not included in OMB's official list of function codes. To understand DOT's inventory, some interested parties needed to contact the agency or OMB to obtain the expanded list of function codes.

Even when agencies used OMB's official list of function codes, in some cases, it is still not clear what activities the agencies' employees are performing because some of OMB's function codes are vague. For example, one of OMB's categories is "other nonmanufacturing operations." It is not clear exactly what the 130 FTEs DOT listed as providing administrative support for other nonmanufacturing operations are actually doing. Some of the other official codes are more specific. For example, DOT listed 114 FTEs as performing "intermediate, direct or general repair and maintenance of electronic and communication equipment."

Codes from the expanded list are also vague in some cases. One of the categories on the expanded list is "other selected functions." Commerce's inventory lists 600 FTEs involved in providing "management support" for "other selected functions." As a result, the information in the inventory alone is insufficient to determine what these activities involve. Other codes on the expanded list are more understandable. For example, Commerce lists 152 FTEs performing "data center operations" under the "automatic data processing" category.

OMB has not made available any further description or elaboration of what specific types of activities each of its function codes represent. Officials from some agencies said that providing definitions of the function codes would be helpful in characterizing their agency's commercial activities. According to an OMB official, however, creating definitions for all the function codes would require a major commitment of time and resources, which OMB does not have.

OMB has met with agency officials to receive their input on revising OMB's guidance to agencies on the preparation of the June 2000 FAIR Act inventories. In the past, we have noted that OMB's work with interagency councils has been successful in tapping talents that exist within agencies, keeping management issues in the forefront, and initiating important improvement projects.¹¹ We found that effective collaboration with agencies—through such approaches as task forces and interagency councils—has emerged as an important central leadership strategy in

¹¹ Government Management: Observations on OMB's Management Leadership Efforts (GAO/T-GGD/AIMD-98-148, May 12, 1998).

developing policies that are sensitive to implementation concerns and in gaining consensus and consistent follow-through within the executive branch. Therefore, one option would be for OMB to lead an agency working group on FAIR Act issues, which could require fewer OMB resources and enhance agencies' involvement.

Officials from some of the agencies also said that OMB's list of function codes does not work well for describing civilian agencies' commercial activities and that it would be useful to revise these codes. A GSA official, for example, said that OMB's function codes are antiquated. GSA created several new function codes to describe the policymaking activities involving compliance reviews, the collection and analysis of data, or the disposition of real property assets for the federal government. As a result, GSA created 10 new function codes under a category it developed for governmentwide management policymaking duties. GSA's codes include activities such as management, administrative and automated data-processing support. FEMA created an entirely unique set of function codes for all of its commercial activities because it determined that all of its functions are unique due to the nature of FEMA's emergency management responsibilities. Many of FEMA's emergency management workers are on call 24-hours a day, with duties that can change daily. A FEMA official said that FEMA wanted to be specific and found OMB's function codes were vague in some cases.

According to OMB's supplemental handbook, the function codes are standardized to "facilitate the aggregation of activities Government-wide and by agency." In addition to some agencies, such as GSA and FEMA, who created their own function codes, the agencies used different formats for their lists, making it more difficult for interested parties to compare potentially similar commercial activities across agencies within the 30-day time period specified by the act to challenge the inventories. Because this was the first effort to develop inventories under the FAIR Act, the inventories varied in part because the agencies did not approach their inventories from a common starting point, interpreted OMB's guidance differently, and adapted the codes to better meet their specific circumstances. In the future, more consistent use of function codes and formats would be helpful in trying to identify whether an agency's inventory should be challenged under the FAIR Act for including or excluding a particular activity. However, as part of the initial implementation of the FAIR Act, OMB's reviews did not achieve consistency in the use of function codes and formats across agencies' inventories.

Agencies Listed Many Commercial Activities as Exempt From Competition

Agencies exempted many of their FTEs performing commercial activities from competition. FEMA, for example, exempted 99 percent (2,302 FTEs) of its commercial activities from competition. The agencies do not intend to consider competing these activities. These decisions cannot be challenged or appealed under the FAIR Act because the act does not require that the activities listed be competed.

OMB decided to revise its Circular A-76 guidance to implement the FAIR Act. As called for in this guidance, agencies' inventories are to contain "reason codes" that characterize the status of each of their commercial activities, as shown in table 2. Because the responsibilities of an activity may vary among agencies and even within an agency, apparently similar activities may be characterized with different reason codes.

Table 2: Reason Codes Contained in Circular A-76 Supplemental Handbook

Reason Code	Explanation
A	Indicates that the function is performed by Federal employees and is specifically exempt by the agency from the cost comparison requirements of the Circular and the Supplemental Handbook.
B	Indicates that the activity is performed by Federal employees and is subject to the cost comparison or direct conversion requirements of the Circular and the Supplemental Handbook.
C	Indicates that the activity is performed by Federal employees, but has been specifically made exempt from the provisions of the Circular and the Supplemental Handbook by Congress, Executive Order or OMB.
D	Indicates that the function is currently performed by in-house Federal employees and is in the process of being cost compared or converted directly to contract or interservice support agreement performance.
E	Indicates that the function is retained in-house as a result of a cost comparison.
F	Indicates the function is currently being performed by Federal employees, but a review is pending force restructuring decision (i.e., base closure, realignment, consolidation, etc).
G	Indicates that the function is prohibited from conversion to contract because of legislation.
H	Waiver issued.
I	Indicates the function is being performed in-house as a result of a cost comparison resulting from a decision to convert from contract to in-house performance.

Source: Codes and explanations taken directly from appendix 2 of OMB's Circular A-76 Supplemental Handbook.

As shown in table 3, the inventories of four of the five agencies we reviewed listed about one-half of the commercial FTEs as reason code A, indicating that these activities are specifically exempted by the agency from the cost comparison requirements of the Circular A-76 process. DOT, for example, exempted 57 percent of the FTEs performing commercial activities from consideration for competition. The agencies exempted

from 37 to 99 percent of their commercial activities from competition, but we could not determine how Commerce designated its commercial activities.¹² (For additional information on each of the agencies' inventories, see app. II.)

Table 3: Number of Commercial FTEs Agencies Designated by Reason Code

Agency	Reason Codes							Total
	A	B	C	D	E	F	Other ^a	
Commerce ^b	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
EPA	775	30	24	0	0	0	0	829
FEMA	2,302	22	0	0	0	0	0	2,324
GSA	874	0	0	0	0	0	6,375	7,249
DOT	7,332	3,163	1,390	438	446	27	0	12,796
Total	11,283	3,215	1,414	438	446	27	6,375	23,198

Note: These agencies did not designate any FTEs with reason codes G, H, or I.

^aGSA created its own reason codes.

^bFTEs were not clearly designated in Commerce's FAIR Act inventory.

Source: GAO analysis of agencies' FAIR Act inventories.

OMB's supplemental handbook states that agencies may modify existing reason codes "as deemed necessary." For example, Commerce created six different modifications for reason code B. However, we could not determine the reason code designations of Commerce's commercial activities because the inventory also listed its FTEs under three categories, which were "exempt, competitive, and core." Therefore, Commerce's inventory was ambiguous and sometimes contradictory. For example, the International Trade Administration's inventory listed 593 FTEs under the "Exempt" column (i.e., exempt from competition) while also assigning these FTEs reason code B (i.e., could be considered subject to competition). In addition, Commerce did not assign any reason codes for a substantial number of FTEs listed throughout its FAIR Act inventory, so it is not clear how Commerce characterized these commercial activities. OMB's review did not correct these inconsistencies within Commerce's inventory before the inventory was made available to Congress and the public.

A Commerce official said that although "sorting inconsistencies" occurred, the agency does not plan to revise its inventory until its June 2000 submission. She said that since interested parties can only challenge whether an activity is included on, or omitted from, the inventory,

¹² The 37 percent includes 12 percent (874 FTEs) GSA exempted from competition under reason code A and 25 percent (1,819 FTEs) that it excluded from competition because these activities are undergoing reinvention efforts.

clarifying the characterizations of Commerce's commercial activities is not necessary to comply with the act and would not affect any potential challenges. She emphasized, however, that Commerce acknowledged these inconsistencies and took steps to correct the problem internally. According to Commerce officials, they have learned a lot from their initial implementation experiences. They said that Commerce has taken steps to ensure that a sound process is in place to effectively develop the June 2000 inventory to better comply with the spirit of the act.

GSA's use of the reason codes also differed compared with other agencies' FAIR Act inventories. According to a GSA official, GSA only used reason code A from the supplemental handbook. GSA created other reason codes based on its Raines list, the Circular A-76 process, and the FAIR Act. For example, GSA created reason codes for commercial activities that are undergoing reinvention efforts that may subsequently be redesignated and for commercial activities that could be outsourced to other federal or private sector providers.

Two agencies we reviewed provided general explanations as to why they were using reason code A to exempt commercial activities from consideration for competition. FEMA's submission to OMB stated that the agency's mission to provide the government's emergency response to natural and man-made disasters justifies designating a high percentage (99 percent) of its commercial activities as exempt from competition. EPA stated that the majority of the activities on its FAIR Act inventory represent commercial core capabilities that should be retained in-house. EPA exempted 775 FTEs, or 93 percent of its 829 commercial FTEs. EPA cited its need to maintain appropriate in-house expertise to effectively apply and enforce the nation's environmental laws in fulfilling its mission and meeting emergency requirements. It also pointed out that EPA has been criticized as being too contractor dependent and noted that in the past it has had to convert some work that was being done under contract back to in-house operations.

Supplemental Information Can Enhance the Inventories

Beyond the requirements of the FAIR Act, some agencies have included supplemental information in their inventories that provides a useful perspective about the range of activities that these agencies perform. This additional information includes listing inherently governmental activities, discussing how listed activities contribute to agencies' strategic and annual

performance, and describing the scope of activities currently under contract.¹³

**Including Inherently
Governmental Activities
Provides a Fuller
Perspective**

In addition to providing function codes and their commercial designation, GSA's FAIR Act inventory provides a fuller perspective about all of the agency's activities by listing both its commercial and inherently governmental activities. Although the FAIR Act does not require agencies to identify their inherently governmental activities, GSA's inventory lists its inherently governmental activities (comprising 7,029 FTEs, which is almost 50 percent of GSA's total of 14,278 FTEs). Information on agencies' inherently governmental activities would be helpful for interested parties to identify differences in how agencies classified similar activities. For example, one agency may classify maintenance activities as inherently governmental, while another agency may classify it as commercial. This information could be used in determining what might be challenged.

Examining particular functions with this information provides a fuller perspective of how the agency's activities are carried out. GSA views some of its activities as entirely inherently governmental, such as the 132 FTEs providing legal services. GSA's inventory also shows that both inherently governmental and commercial FTEs contribute to some activities. For example, GSA designated almost 60 percent of its vehicle acquisition and fleet management activities as commercial, with about 40 percent listed as inherently governmental.

**Linking Commercial
Activities to Agency
Programs and Performance
Enhances Understandability**

A key part of achieving results is recognizing how an agency's strategies and day-to-day activities contribute to achieving an agency's mission and its programmatic goals. Officials at Commerce and FEMA said that their FAIR Act inventories were being used as management tools to identify possible efficiencies to their agencies' programs and performance. Relating an agency's commercial efforts to its strategic and annual performance plans can be useful to managers and decisionmakers in determining how best to align agency programs and activities to achieve results. Information linking activities to the agency's programs also provides useful information for interested parties who are trying to determine what activities agency employees are currently performing.

EPA's inventory links each of the commercial activities listed on its inventory to 1 or more of its 10 strategic goals. For example, EPA linked 153 of the 206 FTEs performing commercial research support activities to its goal of achieving clean and safe water.

¹³ GAO/T-GGD-00-34.

Describing the Scope of Current Contracting Efforts Provides Context for the Inventories

Along with their FAIR Act inventories, agencies can also provide valuable supplemental information about the role that contracting plays in acquiring goods and services for the agency. A description of the scope of activities that have already been contracted can provide an important perspective on and context for the agency's operations.

For example, EPA stated that the amount of services it obtains through contracting is significant in relation to the agency's in-house staffing needs. EPA estimated that the amount of resources it contracted in July 1999 would have translated into 11,000 to 15,000 FTEs if EPA had retained the work in-house, and it provided an enclosure listing some of the types of services that are currently contracted. These services ranged from activities such as elevator maintenance to environmental clean-up activities and oversight.

Similarly, GSA's inventory submission states that the agency functions essentially as managers of private sector contractors. It states that nearly 94 percent of GSA's \$13 billion budget is spent for contractors who provide direct operational support to federal agencies.

Conclusions

Under the first year's implementation of the FAIR Act, 98 agencies have identified about 904,000 FTEs that are performing commercial activities. The number of agencies that have inventoried their activities and identified FTEs performing commercial activities has increased compared with prior efforts to inventory commercial activities. However, the initial implementation of the FAIR Act indicates that there are opportunities for agencies to make further improvements in the inventories provided to Congress and the public.

The clarity and understandability of the five agencies' inventories we reviewed were limited. OMB's guidance containing function codes for agencies to identify their commercial activities was incomplete and vague in some cases. Officials from some agencies said that the list of function codes did not work well for describing some of their commercial activities. Although OMB reviewed them, the agencies' inventories were not always consistent making it difficult to compare potentially similar activities across agencies. Agencies used different formats, including unique codes for identifying their activities. While some flexibility is important to accurately reflect the diversity of the types of specific activities that individual agencies perform, this needs to be balanced with the benefits to interested parties in being able to compare common activities across agencies. At a minimum, OMB's list of function codes should identify all of the codes agencies can use to identify their particular activities. More

specifically, it would be helpful if interested parties could look across agencies' inventories to identify what activities should or should not be included on the inventories in order to file challenges within the 30-day time frame provided under the FAIR Act.

The five agencies we reviewed exempted many of the FTEs performing commercial activities from competition. As a result, although the FAIR Act has increased the number of FTEs identified as performing commercial activities, the actual number of FTEs that could be considered for competition is substantially smaller than the number of commercial FTEs listed. FEMA's inventory, for example, shows that it exempted 99 percent of its commercial activities from competition (all but 22 of its 2,324 commercial FTEs). Designating these FTEs as exempt indicates that FEMA does not intend to consider competing these activities. This decision cannot be challenged or appealed under the FAIR Act, since the act does not require activities listed by the agencies to be competed.

We also found that some of the supplemental information agencies included in their inventories, which was not required under the FAIR Act, was helpful. GSA included all of its activities (i.e., inherently governmental as well as commercial) in its inventory. This provides a fuller perspective about all of the agency's activities. Other information included EPA's inventory linking its commercial activities to the agency's strategic goals and descriptions of the scope of activities currently under contract. Interested parties may find it helpful to have this supplemental information about specific agency operations available to them within the 30-day period that the FAIR Act provides for filing challenges to agency inventories. These types of supplemental information provide a context for an agency's activities and can help enhance the understandability of the FAIR Act inventories.

Recommendations

In order to enhance the clarity and understandability of agencies' FAIR Act inventories, we recommend that the Director of OMB reexamine the function codes appearing in appendix 2 of the Circular A-76 Supplemental Handbook. This reexamination should include

- revising the codes to more accurately capture the activities agencies are performing,
- defining the codes to ensure they are clearly understood, and
- ensuring that OMB's official guidance and its website list all of the codes that agencies are authorized to use, including codes that are specific to individual agencies.

Because OMB may lack the necessary time and resources to accomplish this reexamination on its own, the Director of OMB may want to consider collaborating with agencies—through such approaches as task forces and interagency councils—as a strategy to gain consensus and consistent follow-through on such reexamination efforts.

We also recommend that the Director of OMB reinforce the principles established in OMB’s budget procedures memorandum for OMB staff to enhance the consistency of the inventories within and across executive agencies.

Agency Comments and Our Evaluation

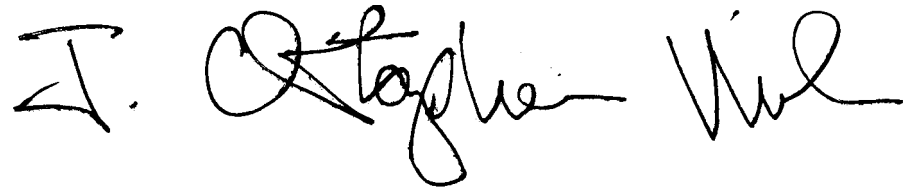
On March 7, 2000, we requested comments on a draft of this report from the Secretaries of Commerce and Transportation, the Administrators of EPA and GSA, and the Directors of FEMA and OMB. We obtained written comments from the Director of FEMA, dated March 22, 2000. The Director stated that the report was a fair analysis of FEMA’s first implementation of the FAIR Act and expected that the report would have a positive effect on the evolving process of meeting the act’s requirements. DOT had no comments on the draft report.

Commerce, EPA, GSA, and OMB provided some clarifying and technical comments to the draft report. We incorporated these changes into this report where appropriate. In addition, Commerce wanted to emphasize that they have taken steps to prevent inconsistencies in future inventories and will develop its inventories to comply with both the spirit and statutory requirements of the FAIR Act. EPA commented that it followed and complied with OMB’s guidance in preparing its inventory.

We are sending copies of this report to Representative James R. Traficant, Jr., Ranking Democratic Member, Subcommittee on Oversight, Investigations, and Emergency Management and to Representative Bud Shuster, Chairman, and Representative James L. Oberstar, Ranking Democratic Member, House Committee on Transportation and Infrastructure. We will also send copies to the Honorable Jacob J. Lew, Director of OMB; the Honorable Rodney E. Slater, Secretary of Transportation; the Honorable William M. Daley, Secretary of Commerce; the Honorable David J. Barram, Administrator of GSA; the Honorable Carol M. Browner, Administrator of EPA; and the Honorable James Lee Witt, Director of FEMA. We will also make copies available to others on request.

Major contributors to this report are listed in appendix III. If you have any questions about this report or would like to discuss it further, please contact me or Susan Ragland, Assistant Director, on (202) 512-8676.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Christopher Mihm". The signature is written in a cursive style with a large, stylized initial "J" and a long, sweeping underline.

J. Christopher Mihm
Associate Director
Federal Management and Workforce Issues

Contents

Letter		1
Appendix I		22
Agencies Rely on Raines Lists and Their Components to Create FAIR Act Inventories	Commerce, DOT, and GSA Used Their Raines Lists EPA and FEMA Used Components Input	22 22
Appendix II		24
Agencies Exempted Many Commercial FTEs From Competition	Commerce’s Inventory Contains Contradictions EPA Exempted Its Modified Function Codes From Competition FEMA Exempted Almost All FTEs From Competition Majority of GSA’s Commercial FTEs Designated as “Commercial Competitive” Many of DOT’s Commercial FTEs Are Repair and Maintenance Activities	24 25 25 26 26
Appendix III		28
GAO Contacts and Staff Acknowledgments		
Tables	Table 1: Number and Percent of FTEs Agencies Identified as Performing Commercial Activities Table 2: Reason Codes Contained in Circular A-76 Supplemental Handbook Table 3: Number of Commercial FTEs Agencies Designated by Reason Code Table II.1: Five Function Codes in Commerce’s Inventory With the Most FTEs Table II.2: Top Five Function Codes Exempted From Competition by EPA Table II.3: Top Five Function Codes Exempted From Competition by FEMA Table II.4: Top Five Function Codes Designated as “Commercial Competitive” by GSA	7 11 12 25 25 25 26

Contents

Table II.5: Top Five Function Codes Exempted From Competition by GSA	26
Table II.6: Top Five Function Codes Exempted From Competition by DOT	27
Table II.7: DOT's Top Five Function Codes That Could Be Considered for Competition	27

Abbreviations

DOT	Department of Transportation
EPA	Environmental Protection Agency
FAIR	Federal Activities Inventory Reform Act
FEMA	Federal Emergency Management Agency
FTE	full-time equivalent
GSA	General Services Administration
OMB	Office of Management and Budget

Agencies Rely on Raines Lists and Their Components to Create FAIR Act Inventories

The five agencies we reviewed delegated much of the responsibility for creating their FAIR Act inventories to their components. Commerce and the Department of Transportation (DOT) instructed their components to update their 1998 Raines lists while the General Services Administration (GSA) used its Raines list intact. The Environmental Protection Agency (EPA) and the Federal Emergency Management Agency (FEMA) based their FAIR Act inventories primarily on input from their components.

Commerce, DOT, and GSA Used Their Raines Lists

To develop its FAIR Act inventory, officials from Commerce's Office of the Chief Financial Officer (CFO) and Assistant Secretary for Administration instructed the department's bureaus and offices to update their Raines lists. According to a Commerce official, bureaus made only minor changes.

Similar to Commerce, DOT's CFO and Assistant Secretary for Budget and Programs delegated the responsibility for developing FAIR Act inventories to each of DOT's 10 transportation modes, for example the Federal Aviation Administration and the Coast Guard. DOT officials said that most of the modes used the same information from their Raines lists for their FAIR Act inventories. For example, the Coast Guard's FAIR Act inventory was identical to its Raines list. A few of the other modes, such as the Federal Highway Administration (FHWA), created new inventories because FHWA had undergone a reorganization that had changed some activities.

GSA's FAIR Act inventory was basically identical to its Raines list that had been developed by an agencywide team organized by GSA's CFO during the summer of 1998. Team members representing the agency's service divisions and staff offices held discussions about what functions should be considered commercial and those that should be considered inherently governmental. Team members' input into these discussions were based on information gathered from the divisions, staff offices, and regions.

EPA and FEMA Used Components Input

EPA's Office of the CFO delegated the responsibility of developing the agency's FAIR Act inventory to EPA's 10 regional offices and 13 program offices. According to an official in the Office of the CFO, EPA's CFO did not want to dictate how to define "commercial activities" but instead wanted the regional and program officials who were closer to the agency's activities to decide how these activities should be designated in the inventory. To assist in this process, officials from EPA's Office of the CFO met with the regional and program officials and union representatives about developing the inventory and provided them with advice and material including OMB's draft guidance. EPA officials reviewed the

inventories for consistency and to ensure that the determinations made were reasonable. An EPA official said that they did not use the Raines list because when it was prepared in the fall of 1998 the agency did not have enough time to complete a thorough analysis of its FTEs or consult with its regional offices.

EPA officials encountered difficulties in deciding whether activities were inherently governmental. According to EPA documentation, officials in EPA's regional and program offices sought guidance on how to categorize FTEs that had duties involving both inherently governmental and commercial activities. Because the agency was not aware of any specific OMB guidance, EPA officials developed a general rule that if less than 50 percent of a FTE's activities are inherently governmental, then the FTE should be allocated between inherently governmental and commercial activities (e.g., 30 percent inherently governmental and 70 percent commercial). If more than 50 percent of the FTE's duties are inherently governmental, the FTE should be designated inherently governmental.

FEMA's Office of Policy and Regional Operations (OPRO) developed its FAIR Act inventory by coordinating with the agency's 10 regions, 20 offices, union representatives, and labor-management partnership council. FEMA hired a private contractor to provide training and assistance to FEMA's regions and offices to develop its FAIR Act inventory. FEMA's OPRO checked the region and office submissions for consistency. FEMA officials made so many changes to its Raines list that it no longer was comparable to the FAIR Act inventory that was eventually submitted to OMB. Similar to EPA, FEMA officials also encountered difficulties with dividing the activities of its staff, in particular, the duties of administrative support staff for senior staff. FEMA officials said that, although private sector contractors could perform these duties, these administrative support staff need to be available on a 24-hour basis to respond to federal emergencies and may on occasion perform inherently governmental duties on behalf of senior staff. Therefore, FEMA exempted these FTEs from consideration for competition.

Agencies Exempted Many Commercial FTEs From Competition

Agencies exempted many of the FTEs performing commercial activities from competition. Commerce's inventory contained numerous inconsistencies that prevented identifying how many FTEs were subject to or exempted from competition. To determine the types of activities the agencies exempted, we identified the five function codes with the most FTEs that were exempt from competition by EPA, GSA, FEMA, and DOT. In addition, because GSA and DOT designated a relatively large number of FTEs as performing activities that could be considered for competition, we also identified the five function codes with the most FTEs designated by GSA and DOT as activities that could be considered for competition.

Commerce's Inventory Contains Contradictions

In many instances, Commerce's FAIR Act inventory shows contradictory information, preventing an understanding of whether the activity could be subject to competition or whether Commerce considers the activity exempt from competition. Commerce's inventory is based on the Raines lists produced by the 10 major bureaus, offices, and administrations within the department. These lists placed the FTEs among three columns representing the Raines list's categories of "Exempt," "Competitive," and "Core." Next to these columns is a "Reason" column containing the Circular A-76 reason codes (A, B, C, D, etc.). According to a Commerce official, "sorting inconsistencies" occurred while updating and consolidating these inventories. As a result, many FTEs were listed in columns that contradicted their designated reason codes. For example, of the 80 FTEs in the National Telecommunications Information Administration's inventory, 66 FTEs were listed under the "Exempt" column (i.e., exempt from competition) while also being assigned reason code B (i.e., could be considered subject to competition). Thus, the information is not consistent. These contradictions appear throughout 9 of the 10 inventories that make up Commerce's FAIR Act submission.

A Commerce official said that the agency recognizes that its published inventory contains contradictions and plans to correct them in its June 2000 FAIR Act submission to OMB. Despite these contradictions, we were able to identify the five function codes having most of Commerce's FTEs, which are listed in table 1.

Appendix II
Agencies Exempted Many Commercial FTEs From Competition

Table II.1: Five Function Codes in Commerce’s Inventory With the Most FTEs

Function Codes	FTEs
Research, Development, Test, and Evaluation Support—Applied Research	1,891
Other Selected Functions—Administrative Support	904
Other Selected Functions—Other Functions	853
Other Selected Functions—Management Support	600
Other Selected Functions—Maritime Activities	429

Source: GAO analysis of Commerce's FAIR Act inventory.

EPA Exempted Its Modified Function Codes From Competition

EPA exempted 775 FTEs (or 93 percent of its FTEs performing commercial activities) from competition. About 54 percent of these exempted FTEs were associated with the five function codes having the most commercial FTEs at EPA. As shown in table 2, two of these function codes, one involving automatic data-processing activities and the other involving environmental risk analysis activities, were created especially by EPA.

Table II.2: Top Five Function Codes Exempted From Competition by EPA

Function Codes	FTEs
Research, Development, Test, and Evaluation Support	191
Environment—Administrative Support	115
Automatic Data Processing—Information Technology/Management ^a	53
Environment—Federal Insecticide, Fungicide, and Rodenticide Act/Food, Drug, and Cosmetic Act (Risk Analysis) ^a	33
Finance and Accounting—Accounts Payable	29

^a The function codes created by EPA.

Source: GAO analysis of EPA's FAIR Act inventory.

FEMA Exempted Almost All FTEs From Competition

FEMA exempted 2,302 FTEs (or 99 percent of the FTEs performing commercial activities) from competition. Sixty-six percent of these exempted FTEs were associated with the five function codes having the most commercial FTEs at FEMA, which are listed below in table 3.

Table II.3: Top Five Function Codes Exempted From Competition by FEMA

Function Codes^a	FTEs
Response and Recovery Directorate—Multi-Discipline Specialist	695
Preparedness, Training and Exercises Directorate—Multi-Discipline Specialist	258
Information Technology Services Directorate—Multi-Discipline Specialist	233
Mitigation Directorate—Multi-Discipline Specialist	216
Response and Recovery Directorate—Management Support	124

^aLike FEMA's entire inventory, all five of these function codes are "emergency management" function codes unique to FEMA and were used in its inventory that was released by OMB.

Source: GAO analysis of FEMA's FAIR Act inventory.

Four of the 5 function codes are multidiscipline specialists involving 1,402 FTEs from 4 of FEMA’s directorates.

Majority of GSA’s Commercial FTEs Designated as “Commercial Competitive”

Unlike the three other agencies in our review that designated most of their commercial activities as exempt from competition, GSA designated most of its commercial FTEs (63 percent) as “commercial competitive.” Of the 4,556 FTEs designated as commercial competitive, 88 percent were associated with the 5 function codes shown in table 4.

Table II.4: Top Five Function Codes Designated as “Commercial Competitive” by GSA

Function Codes	FTEs
Maintenance, Repair, Alteration, and Minor Construction of Real Property—Other Maintenance	2,115
Installation Services—Supply Operations	1,143
Installation Services—Vehicle Acquisition and Fleet Management ^a	520
Personnel Management	130
Installation Services—Transportation Management Services	102

^aGSA created this function code as a modification of "installation services."

Source: GAO analysis of GSA’s FAIR Act inventory.

In contrast to the other agencies that exempted a majority of their commercial FTEs from competition, GSA exempted only 12 percent (or 874 FTEs) from competition. Of the 874 FTEs exempted, 78 percent of the FTEs were associated with 5 function codes, as shown in table 5.

Table II.5: Top Five Function Codes Exempted From Competition by GSA

Function Codes	FTEs
Maintenance, Repair, Alteration, and Minor Construction of Real Property—Other Maintenance	489
Other Selected Functions—Information and Telecommunications Program Management	65
Investigations—Inspector General Services	50
Education and Training—Professional Development Training	48
Maintenance, Repair, Alteration, and Minor Construction of Real Property—Management	34

Source: GAO analysis of GSA’s FAIR Act inventory.

Many of DOT’s Commercial FTEs Are Repair and Maintenance Activities

DOT exempted 7,332 FTEs (or 57 percent of its FTEs performing commercial activities) from competition. Of these FTEs, 63 percent were associated with five function codes, which are listed in table 6.

Appendix II
Agencies Exempted Many Commercial FTEs From Competition

Table II.6: Top Five Function Codes Exempted From Competition by DOT

Function Codes	FTEs
Intermediate, Direct or General Repair and Maintenance of Equipment—Aeronautical Support Equipment	2,881
Other NonManufacturing Operations—Administrative Support	659
Depot Repair, Maintenance, Modification, Conversion or Overhaul of Equipment—Vessels	429
Depot Repair, Maintenance, Modification, Conversion or Overhaul of Equipment—Aircraft	351
Other Nonmanufacturing Operations—Management Support	272

Source: GAO analysis of DOT's FAIR Act inventory.

DOT also designated 3,163 FTEs (or almost 25 percent of its commercial FTEs) as performing activities that could be considered for competition. Of these FTEs, over half are associated with the five function codes listed in table 7.

Table II.7: DOT's Top Five Function Codes That Could Be Considered for Competition

Function Codes	FTEs
Other Nonmanufacturing Operations—Air Transportation Services	794
Intermediate, Direct or General Repair and Maintenance of Equipment—Maintenance of Other Equipment	382
Intermediate, Direct or General Repair and Maintenance of Equipment—Aeronautical Support Equipment	267
Intermediate, Direct or General Repair and Maintenance of Equipment—Vessels	190
Other Selected Functions—Administrative Support	132

Source: GAO's analysis of DOT's FAIR Act inventory.

GAO Contacts and Staff Acknowledgments

GAO Contacts

J. Christopher Mihm or Susan Ragland, (202) 512-8676

Acknowledgments

In addition to those named above, Steven Lozano, Jerry Sandau, Tom Beall, and Susan Michal-Smith made key contributions to this report.

Ordering Copies of GAO Reports

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Order by mail:

**U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013**

or visit:

**Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

Orders may also be placed by calling (202) 512-6000 or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touch-tone phone. A recorded menu will provide information on how to obtain these lists.

Viewing GAO Reports on the Internet

For information on how to access GAO reports on the INTERNET, send e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

http://www.gao.gov

Reporting Fraud, Waste, and Abuse in Federal Programs

To contact GAO FraudNET use:

Web site: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-Mail: fraudnet@gao.gov

Telephone: 1-800-424-5454 (automated answering system)

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested

